Calendar No. 445

99TH CONGRESS
1st Session

SENATE

REPORT
99-206

PANAMA CANAL AMENDMENTS ACT OF 1985

DECEMBER 3 (legislative day, DECEMBER 2), 1985.—Ordered to be printed

Mr. THURMOND (for Mr. GOLDWATER), from the Committee on Armed Services, submitted the following

REPORT

[To accompany H.R. 729]

The Committee on Armed Services, to which was referred the bill (H.R. 729) to amend the Panama Canal Act of 1979 in order that claims for vessels damaged outside the locks may be resolved in the same manner as those vessels damaged inside the locks and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

H.R. 729 makes several changes in the Panama Canal Act of 1979, Public Law 96-70 (the 1979 Act), concerning the responsibility of the Panama Canal Commission (PCC) for damage it causes to vessels, or their cargo, crews, or passengers, passing through the Panama Canal. The bill amends the existing law as follows:

(1) It grants the PCC authority to adjust and pay claims exceeding $120,000 for damage the PCC causes to vessels outside the canal locks. The 1979 Act repealed this authority and requires all such claims to be sent to Congress for resolution.

(2) It grants claimants damaged by the PCC outside the canal locks the right to sue on their claims if settlement with the PCC cannot be reached. The 1979 Act repealed this right, instead imposing sovereign immunity, which bars all such suits.

(3) It sets a two-year statute of limitation on the filing of vessel damage claims against the PCC. The 1979 Act contains no limitation.

(4) It sets a one-year statute of limitation on the filing of lawsuits based on vessel damage claims, beginning when the PCC

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mails notice of its final determination with respect to the claim. The 1979 Act contains no limitation.

(5) It abolishes PCC liability without fault for vessels damaged inside the canal locks, replacing it with a traditional negligence standard, which requires that liability be predicated on fault. For those vessels which do not have a Panama Canal pilot in control of the vessel while inside the locks, which applies only to vessels less than 37.5 meters in length, the claims are limited to $50,000 for damage to the vessel and cargo.

(6) In order to protect the General Fund of the U.S. Treasury, it tightens the existing restrictions which limit the source of funds available to pay vessel damage claims and judgments against the PCC to PCC funds.

(7) It authorizes claimants to include, as an element of their damages, the cost of vessel detention exceeding 24 hours resulting from a vessel accident investigation by the PCC only to the extent to which the accident was related to the negligence of a PCC employee. Existing law prohibits any recovery for vessel detention.

(8) It authorizes the PCC to purchase catastrophe insurance to cover any expenses resulting from an unpredictable and catastrophic marine accident.

(9) It authorizes the attorneys of the Panama Canal Commission to represent the Commission in any action arising under the Panama Canal Act subchapter on vessel damage.

Current and Prior Law, Legislative History, and Section-by-Section Analysis

The report of the Committee on Merchant Marine and Fisheries of the House of Representatives fully sets forth the current and prior law, legislative history, and section-by-section analysis of the bill. This is House Report 99-184, 99th Congress, 1st Session. Those interested in such current and prior law, legislative history, and section-by-section analysis are referred to the House report.

Congressional Budget Office Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, November 22, 1985.

Hon. Barry Goldwater,
Chairman, Committee on Armed Services, U.S. Senate, Russell Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 729, the Panama Canal Amendments Act of 1985, as ordered reported by the Senate Committee on Armed Services, November 5, 1985. The potential budget impact of H.R. 729 depends largely on what actions the Congress would take in the absence of this bill. If no action would otherwise be taken on outstanding claims, H.R. 729 could result in initial outlays of $8.5 million and future outlays of approximately $5 million annually by the Panama Canal Commission for payment of claims. (Such payments would require appropriations action.) Amounts already collected

from tolls would cover such costs for several years, and future claims costs would be offset by increased canal tolls. Other costs of the bill would be less than $1 million annually, and any increase in apropriations would be offset by increased tolls.

H.R. 729 authorizes the Panama Canal Commission to adjust and pay all claims for damage to vessels occurring both inside and outside the Panama Canal locks, and extends to outside-the-locks claimants the right to bring a court action on their claims. The commission already has the authority under current law to pay claims for damages occurring inside the canal locks, and outside-the-locks claims of less than $120,000. Outside-the-locks claims exceeding $120,000 are now submitted to the Congress by the commission, along with its recommendation for settlement. The Congress may take whatever action it chooses on the claim, and is not required to make any settlement.

The bill also amends the Panama Canal Act of 1979 to clarify that all damage claims be paid only from funds appropriated to the Panama Canal Commission for the operation and maintenance of the Canal. While this is already the case for claims that the commission currently has the authority to settle, the act does not specify the source of payment for damage claims submitted to the Congress. The commission, however, reflects the liability for these accidents in its books, and through September 1985 has set aside $23.1 million to cover outside-the-locks claims in excess of $120,000.

The amount of additional expenditures by the federal government that would result from this bill depends upon what action, if any, the Congress would take to settle outside-the-locks claims in the absence of the bill, and the cost of the settlements the commission would negotiate if the bill is enacted. Since 1979, the commission has submitted to the Congress 18 claims totaling $18 million. The commission has recommended that the Congress settle these claims for $8.5 million, but no settlements have yet been awarded. In addition, the commission is processing 12 more claims for transmittal to the Congress. If, under current law, the Congress would choose to take no action on these or any future settlements, the bill would result in increased outlays for settlement costs of at least $8.5 million initially, with future year costs estimated to be approximately $5 million per year. Payment of these amounts would require appropriations and would initially be derived from the $23.1 million already collected from tolls and set aside for this purpose. On the other hand, if the Congress would settle claims based upon the commission's recommendations, this provision would have little or no budget impact.

Additional expenditures could also result from the provision of H.R. 729 that would allow outside-the-locks claimants to file suit against the United States if they disagree with the settlement offered by the commission. No judicial recourse is offered under current law for outside-the-locks claims, regardless of cost. Therefore, the bill could result in additional government expenditures if any court settlements exceed the amount that would have been offered by the Congress or the commission in the absence of the bill. It is impossible to estimate, however, how many claimants would exercise this provision, and what actions the court would take.

This bill also authorizes the Panama Canal Commission to purchase insurance to cover catastrophic marine accidents, including extensive damage to a vessel or to the Canal itself. Based on information from the commission, we estimate that this provision would cost less than $1 million annually. H.R. 729 also limits the Panama Canal Commission's liability to $50,000 for claims for damages to vessels not under the control of a Panama Canal pilot inside canal locks. This provision would save the commission an estimated $250,000 annually.

The Panama Canal Commission, established as an agency in the Executive Branch by the Panama Canal Act of 1979, is funded through annual appropriations. These appropriations are limited, however, to estimated revenues from tolls levied on vessels using the Canal. Therefore, any increase in appropriations necessary to cover potential costs of this bill--including insurance and claims--would be offset by increased tolls.

We estimate that no cost to state or local governments would be incurred as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT

Paragraph 11(b) of Rule XXVI, the Standing Rules of the Senate, requires that a report on the regulatory impact of the bill be included in the report on such bill. The Committee finds that in the case of this legislation, there is no regulatory impact.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI, the Standing Rules of the Senate, changes in existing laws proposed to be made by the bill are shown below. Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is printed in Roman.

PANAMA CANAL ACT OF 1979

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TITLE I—ADMINISTRATION AND REGULATIONS

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CHAPTER 4—CLAIMS FOR INJURIES TO PERSONS OR PROPERTY

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Subchapter II—Vessel Damage

INJURIES IN LOCKS OF CANAL

SEC. 1411. [The] *(a) Subject to subsection (b) of this section, the* Commission shall promptly adjust and pay damages for injuries to vessels, or to the cargo, crew, or passengers of vessels, which may arise by reason of their passage through the locks of the Panama Canal [under the control of officers or employees of the United States. Damages may not be paid where the injury was proximately caused by the negligence or fault of the vessel, master, crew, or passengers.] *When the injury was promimately caused by negligence or fault on the part of an officer or employee of the United States acting within the scope of his employment and in the line of his duties in connection with the operation of the Canal.* If the negligence or fault of the vessel, master, crew, or passengers proximately contributed to the injury, the award of damages shall be diminished in proportion to the negligence or fault attributable to the vessel, master, crew, or passengers. Damages may not be allowed and paid for injuries to any protrusion beyond any portion of the hull of a vessel, whether it is permanent or temporary in character. A vessel is considered to be passing through the locks of the Canal, under the control of officers or employees of the United States, from the time the first towing line is made fast on board before entrance into the locks and until the towing lines are cast off upon, or immediately prior to, departure from the lock chamber. *No payment for damages on a claim may be made under this section unless the claim is filed with the Commission within two years after the date of the injury, or within one year after the date of the enactment of the Panama Canal Amendments Act of 1985, whichever is later.*

(b)(1) With respect to a claim under subsection (a) for damages for injuries to a vessel or its cargo, if, at the time the injuries were incurred, the navigation or movement of the vessel was not under the control of a Panama Canal pilot, the Commission may adjust and pay the claim only if the amount of the claim does not exceed

$50,000, unless the injuries were caused by another vessel under the control of a Panama Canal pilot.

(3) The provisions of subsections (c) through (e) of section 1401 of this Act shall apply to any claim described in paragraph (1).

INJURIES OUTSIDE LOCKS

SEC. 1412. The Commission shall promptly adjust and pay damages for injuries to vessels, or to the cargo, crew, or passengers of vessels which may arise by reason of their presence in the Panama Canal, or waters adjacent thereto, other than the locks, when the injury was proximately caused by negligence or fault on the part of an officer or employee of the United States acting within the scope of his employment and in the line of his duties in connection with the operation of the Canal[, and when the amount of the claim does not exceed $120,000]. If the negligence or fault of the vessel, master, crew, or passengers proximately contributed to the injury, the award of damages shall be diminished in proportion to the negligence or fault attributable to the vessel, master, crew, or passengers. In the case of a vessel which is required by or pursuant to regulations prescribed pursuant to section 1801 of this Act to have a Panama Canal pilot on duty abroad, damages may not be adjusted and paid for injuries to the vessel, or its cargo, crew, or passengers, incurred while the vessel was underway and in motion, unless at the time the injuries were incurred the navigation or movement of the vessel was under the control of a Panama Canal pilot. *No payment for damages on a claim may be made under this section unless the claim is filed with the Commission within two years after the date of the injury, or within one year after the date of the enactment of the Panama Canal Amendments Act of 1985, whichever is later.*

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DELAYS FOR WHICH NO RESPONSIBILITY IS ASSUMED

SEC. 1414. The Commission is not responsible, and may not consider any claim, for demurrage or delays caused by—

(1) landslides or other natural causes;

(2) necessary construction or maintenance work on Canal locks, terminals, or equipment.

(3) obstruction arising from accidents;

(4) time necessary for admeasurement;

(5) congestion of traffic;

[(6) time necessary for investigation of marine accidents; or]

(6) an investigation of a marine accident that is conducted within 24 hours after the accident occurs, except that any liability of the commission beyond that 24-hour period shall be limited to the extent to which the accident was caused, or contributed to, by the negligence of an employee of the Commission acting within the scope of the employee's official duties; or

SETTLEMENT OF CLAIMS

SEC. 1415. [(a) Subject to subsection (b) of this section, the] *The* Commission, by mutual agreement, compromise, or otherwise, may adjust and determine the amounts of the respective awards of damages pursuant to this subchapter. [Such amounts shall be payable promptly out of any moneys appropriated or allotted for the maintenance and operation of the Panama Canal.] *Such amounts may be paid only out of money appropriated or allotted for the maintenance and operation of the Panama Canal.* Acceptance by a claimant of the amount awarded to him shall be deemed to be in full settlement of such claim against the Government of the United States.

[(b) The Commission shall not adjust and pay any claim for damages for injuries arising by reason of the presence of the vessel in the Panama Canal or adjacent waters outside the locks where the amount of the claim exceeds $120,000 but shall submit the claim to the Congress in a special report containing the material facts and the recommendation of the Commission thereon.]

ACTIONS ON CLAIMS

SEC. 1416. A claimant for damages pursuant to section [1411] *1411(a) or 1412* of this Act who considers himself aggrieved by the findings, determination, or award of the Commission in reference to his claim may bring an action on the claim against the Commission in the United States District Court for the Eastern District of Louisiana. Subject to the provisions of this chapger and of applicable regulations issued pursuant to section 1801 of this Act relative to navigation of the Panama Canal and adjacent waters, such actions shall proceed and be heard by the court without a jury according to the principles of law and rules of practice obtaining generally in like cases between a private party and a department or agency of the United States. [Any judgment obtained against the Commission in an action under this subchapter shall be paid out of any money appropriated or allotted for the maintenance and operation of the Panama Canal.] An action for damages cognizable under this section shall not otherwise lie against the United States or the Commission, nor in any other court, than as provided in this section; nor may it lie against any officer or employee of the United States or of the Commission. *Any action on a claim under this section shall be barred unless the action is brought within one year after the date on which the Commission mails to the claimant written notification of the Commission's final determination with respect to the claim, or within one year after the date of the enactment of the Panama Canal Amendments Act of 1985, whichever is later. Attorneys appointed by the Commission shall represent the Commission in any action arising under this subchapter.*

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INSURANCE

SEC. 1419. The Commission is authorized to purchase insurance to protect the Commission against major and unpredictable revenue losses or expenses arising from catastrophic marine accidents.

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COMMITTEE ACTION

On November 5, 1985, the Committee voted without objection to favorably report H.R. 729.

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Calendar No. 446

99TH CONGRESS *1st Session* | SENATE | REPORT 99-207

PANAMA CANAL COMMISSION AUTHORIZATION ACT, FISCAL YEAR 1986

DECEMBER 3 (legislative day, DECEMBER 2), 1985.—Ordered to be printed

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Mr. THURMOND (for Mr. GOLDWATER), from the Committee on Armed Services, submitted the following

REPORT

[To accompany H.R. 1784]

The Committee on Armed Services, to which was referred the bill (H.R. 1784) to authorize appropriations for fiscal year 1986 for the operation and maintenance of the Panama Canal, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The Committee recommends that the bill pass in the same form that it was passed by the House with two amendments. First, Section 8 of the House bill has been struck. Section 8 provided that it was the sense of the Congress that the fiscal year 1986 expenditures of the Commission should be frozen at levels approved for fiscal year 1985 and that all possible steps should be taken to assure that any savings resulting from the action accrue to the General Funds of the Treasury as miscellaneous receipts. The Committee struck this provision because of a concern that the implications of the provision were at variance with the Panama Canal Treaty.

A new Section 8 has been substituted which specifies that the effective date for Sections 5 and 6 of the Act is to be October 1, 1985, the start of the fiscal year.

LESIGLATIVE HISTORY, BACKGROUND AND SECTION-BY-SECTION ANALYSIS

The report of the Committee on Merchant Marine and Fisheries of the House of Representatives fully sets forth the background,

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legislative history, and a section-by-section analysis of the bill. This is House report 99-59, 99th Congress, 1st session. Those interested in such background, legislative history, and section-by-section analysis are referred to the House report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 26, 1985.

Hon. BARRY GOLDWATER,
Chairman, Committee on Armed Services,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 1784, the Panama Canal Commission Authorization Act, Fiscal Year 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill number: H.R. 1784.

2. Bill title: Panama Canal Commission Authorization Act, Fiscal Year 1986.

3. Bill status: As ordered reported by the Senate Committee on Armed Services, November 5, 1985.

4. Bill purpose: The bill authorizes the appropriation of $436.8 million from the Panama Canal Commission Fund for operating and capital expenses of the Panama Canal Commission in fiscal year 1986. In addition, the bill authorizes such sums as may be necessary for increases in employee benefits authorized by law and for increased costs for fuel expenses, and for covering payments to Panama under paragraph 4(a) of Article XIII of the Panama Canal Treaty of 1979—the net tons transited payment. Section 5 of the bill amends the Panama Canal Act of 1979, authorizing the commission to provide education, leave travel and health care benefits to certain employees. Section 6 of the bill also amends the act, authorizing the commission to compensate certain members of its board for time traveling to and from and attending board meetings. No additional appropriation is authorized for these amendments. Section 7 eliminates the 180-day notification period associated with the act's requirement that the President notify the Congress in advance of transferring housing to the Republic of Panama.

The amount specifically authorized by the bill is $10 million less than the amount requested by the Administration for fiscal year 1986, reflecting an amendment that assumes the fiscal year 1986 interest payment on the U.S. investment in the Panama Canal will be paid directly to the general fund of the U.S. Treasury.

5. Estimated cost to the Federal Government:

	1986	1987	1988	1989	1990
Authorization level	436.8				
Estimated outlays	380.5	56.3			

Including outlays from prior years' budget authority, total 1986 outlays are estimated to be $436 million, assuming the appropriation of the amount authorized by this bill. Receipts from operation of the Canal are estimated to be $448 million in 1986.

The costs of this bill fall within budget function 400.

Basis of estimate: It is assumed that all funds authorized will be appropriated for fiscal year 1986. No additional amount was estimated or added for increases in pay and employee benefits authorized by the bill because the First Concurrent Resolution on the Budget—Fiscal year 1986 assumes no such increases in fuel expenses. The payments to Panama, based on net tonnage of vessels transiting the Canal, are part of the operating expenses. Estimated outlays are based on recent historical disbursement patterns of the Panama Canal Commission.

Sections 5, 6, and 7 of the bill will not be affected buget totals for fiscal year 1986, because spending for these activities is covered by the authorization for operating expenses. In future years, any additional costs would be reflected in canal tolls, and would not significantly affect the budget totals.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On April 23, 1985, CBO prepared a cost estimate for H.R. 1784, as ordered reported by the House Committee on Merchant Marine Fisheries. The House and Senate bill are identical except for a technical amendment in the Senate bill setting an effective date of October 1, 1985. The CBO estimates differ, because the estimate for the House bill, which was prepared before the 1986 budget resolution was enacted, assumed a 3.5 percent increase in pay and employee benefits (reflecting baseline assumptions), while the estimate for the Senate bill assumes no pay increase—consistent with the First Concurrent Resolution on the Budget—Fiscal Year 1986.

9. Estimated prepared by: Heidi E. Zukoski.

10. Estimated approved by: James L. Blum, Assistant Director, for Budget Analysis.

Regulatory Impact

Paragraph 11(b) of Rule XXVI, the Standing Rules of the Senate, requires that a report on the regulatory impact of the bill be included in the report on such bill. The Committee finds that in the case of this legislation, there is no regulatory impact.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI, the Standing Rules of the Senate, changes in existing law proposed to be made by the bill are shown below. Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is printed in Roman.

PANAMA CANAL ACT OF 1979

To provide for the operation and maintenance of the Panama Canal under the Panama Canal Treaty of 1977, and for other purposes.

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TITLE I—ADMINISTRATION AND REGULATIONS

CHAPTER 1—PANAMA CANAL COMMISSION

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SUPERVISORY BOARD

SEC. 1102(a) * * *

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(b) The President shall appoint the members of the Board. The members of the Board who are United States nationals shall be appointed by and with the advice and consent of the Senate. Each member of the Board shall hold office at the pleasure of the President and, before assuming the duties of such office, shall take an oath to discharge faithfully the duties of his office. Members of the Board shall serve without compensation but shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in accordance with section 1107 of this Act, *except that, in addition to such travel or transportation expenses, members of the Board who hold no other office with either the Government of the United States or the Republic of Panama for which they receive pay are authorized to be compensated at the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day during which they are traveling to or from or attending meetings of the Board as provided in subsection (c) of this section.*

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CHAPTER 2—EMPLOYEES

Subchapter I—Panama Canal Commission Personnel

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EDUCATIONAL TRAVEL BENEFITS

SEC. 1207. (a) * * *

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(b) The regulations prescribed by the Commission under this section shall—

(1) provide eligibility requirements which must be met by such dependents to qualify for transportation under this section, including a requirement that all eligible dependents must be under 23 years of age; and

(2) limit the transportation provided to [one round trip] *two round trips* during any one-year period.

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TRAVEL AND TRANSPORTATION EXPENSES

SEC. 1210. The Commission may pay the expenses of vacation leave travel for an employee of the Commission to whom section 1206 of this Act applies and for transportation of the employee's family from the employee's post of duty in Panama to the place of the employee's actual residence at the time of appointment to the post of duty. The authorization of expenses under this section shall be in accordance with subchapter II of chapter 57 of title 5, United States Code, and the regulations issued under that subchapter, except that the Commission may prescribe required periods of service notwithstanding section 5722 of title 5, United States Code, and the regulations issued under subchapter II of chapter 57 of such title.

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CHAPTER 3—FUNDS AND ACCOUNTS

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Subchapter III—Interagency Accounts

INTERAGENCY SERVICES; REIMBURSEMENTS

SEC. 1321. (a) * * *

[(e) The appropriations or funds of the Commission, or of any other department or agency of the United States conducting operations in the Republic of Panama, shall be available, in accordance with subsection (d) of this section, to defray the cost of—

(1) health care services to elderly or disabled persons who were eligible to receive such services before the effective date of this Act, less amounts payable by such persons, and

(2) educational services provided by schools in the Republic of Panama, which are not operated by the United States, to persons who were receiving such services at the expense of the Canal Zone Government before the effective date of this Act.]

(e) The appropriations or funds of the Commission, or of any other department or agency of the United States conducting operations in the Republic of Panama, shall be available to defray the cost of—

(1) health care services to elderly or disabled persons who were eligible to receive such services before the effective date of this Act, less amounts payable by such persons, and

(2) educational services provided by schools in the Republic of Panama, which are not operated by the United States, to employees of the Commission who are citizens of the United States and persons who were receiving such service at the expense of the Canal Zone Government before the effective date of this Act.

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CHAPTER 5—PUBLIC PROPERTY

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TRANSFER OF PROPERTY TO PANAMA

SEC. 1504. (a) * * *

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(b) With respect to the transfer of all other property (not described in subsection (a)(1) of this section) to be transferred in accordance with the terms of the Panama Canal Treaty of 1977 and related agreements, the Secretary of State may convey such property from time to time in accordance with the terms of such Treaty and related agreements. [At least 180 days before] Before the transfer of any such property, the President must submit a written report to the Congress—

(1) precisely identifying and describing the particular property to be transferred;

(2) certifying the state of compliance by the Republic of Panama with such Treaty and related agreements; and

(3) setting forth the reasons for the conveyance being made at the particular time.

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COMMITTEE ACTION

On November 5, 1985, the Committee voted without objection to favorably report H.R. 1784.

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